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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,121	02/28/2002	David S. Goldstein	293/002CONT2	3451
1473	7590	03/03/2005	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			THALER, MICHAEL H	
		ART UNIT		PAPER NUMBER
				3731

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/090,121	GOLDSTEEN ET AL.
	Examiner	Art Unit
	Michael Thaler	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,7-16 and 23-33 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 4-6 and 17-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

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Claims 1-3, 7-16 and 23-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on June 14, 2004.

Claims 17-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This application is described as being a continuation of application Serial No. 09/955,244 which is one of a series of parent applications. There is no basis in any of the parent applications for the feature defined in claim 17 of a collapsing portion for axial collapsing a spikes section. There is no basis for the feature defined in claim 18 of a collapsing portion that buckles. There is no basis for the feature defined in claim 19 of a collapsing portion that twists. There is no basis for the feature defined in claim 20 of a collapsing portion that folds out. There is no basis for the feature defined in claim 21 of a collapsing portion that selfdeforms.

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There is no basis for the feature defined in claim 22 of a collapsing portion that plastically deforms.

Claims 17-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not enable one skilled in the art to make and/or use the claimed invention for the reasons set forth above.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter for the reasons set forth above. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Claims 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what structure of the specification and drawings is intended to form a basis for the claimed subject matter. Therefore the scope of the claims is unclear.

Claims 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaster et al. (5,234,447). Kaster et al.

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disclose cylinder-like body 46 and a set of spikes (e.g. the main portion of each member 43) coupled to the body 46 by joints (the portion of each spike near body 46 which is bent as shown in figures 17-19). As to the term "twisting" in claim 4, line 5, each of the Kaster et al. joints is inherently capable of being twisted since it is made of thin material as indicated in col. 2, lines 44-46. The method step of twisting is given no patentable weight in the apparatus claims since the prior art device is inherently capable of being used as claimed.

Claims 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakura (4,214,587). Sakura discloses cylinder-like body 11 and a set of spikes (e.g. the main portion of each barb 12) coupled to the body 11 by joints (the portion of each spike near body 11). Each of the Kaster et al. joints is inherently capable of being twisted since it is made of thin resilient material as indicated in col. 3, lines 52-67. The method step of twisting is given no patentable weight in the apparatus claims since the prior art device is inherently capable of being used as claimed.

Claims 17-22 are rejected under 35 U.S.C. 102(a) as being anticipated by Loshakove et al. (WO 01/41623 A2). Note claims 75-80 of Loshakove et al. Note that the effective filing date for claims 17-22 of this application no earlier than Feb. 28,

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2002 because none of the parent applications provides a basis for the claimed subject matter under the of 35 U.S.C. 112, first paragraph.

Applicant's arguments filed Dec. 29, 2004 have been fully considered but they are not persuasive. As to claim 17, the priority document (U.S. Patent 5,976,178) fails to disclose a collapsing portion, for axially collapsing of the spikes section. Loshakove et al. (WO 01/41623 A2), in figures 6B and 6C and page 19, lines 6-12, for example, disclose a spikes section 613 defining a collapsing portion 618 for axially collapsing the spikes section. In sharp contrast, the barbs 436'' of the priority document spring radially outward as indicated in col. 18, lines 62-65. There is no disclosure in the priority document that the barbs 436'' axially collapse. As to claim 18 and 20, Loshakove et al. (WO 01/41623 A2) disclose that the collapsing portion 626 buckles and folds out (e.g. figure 6E). In sharp contrast, there is no disclosure in the priority document that barbs 436'' buckle and fold out.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

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Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht
2/27/05



MICHAEL THALER
PRIMARY EXAMINER
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